JAMIR HASSAN NAJIR HASSAN

v.

KANG MIN

HIGH COURT BORNEO, KUCHING
HAIDAR MOHD. NOOR J
[SUIT NO. KG. 100 OF 1990]
17 MAY 1991

LAND LAW: *Whether doctrine of adverse possession was applicable in the Torrens System by virtue of the Sarawak Land Code - Indefeasible title - Acquiring a possessory title against an unregistered interest - Absence of the statute of limitation in the Land Code - Land Code (Cap 81) (Sarawak), ss. 2, 30(1), 131, 132, 178 - Limitation Ordinance, s. 26, item 112 of Schedule - National Land Code 1965, s. 341*

CIVIL PROCEDURE: *Application to strike out claim - Whether reasonable cause of action - Frivolous, vexatious - Abuse of process of the Court - Inherent jurisdiction of the Court - Rules of the High Court 1980, O. 14, O. 18 r. 19.*

The plaintiff lodged a caveat on 16 April 1990 in respect of six parcels of land (the said lands) claiming adverse possession of upwards of 17 years against the interests of the registered proprietor (LCY) on the ground that the right of LCY had been extinguished by virtue of s. 26 of the Limitation Ordinance read with item 112 of the Schedule to the Ordinance. On 26 June 1990, the plaintiff filed an action claiming *inter alia* a declaration that LCY's right and title had become extinguished and that he was entitled to be registered as the proprietor of the said lands.

Further, by way of notice of motion, the plaintiff asked for an order that the caveat lodged shall be deemed not to have lapsed under s. 178 of the Land Code until after the judgment in the action.

The Court refused the plaintiff's notice of motion.

The defendant, who was executrix of LCY, filed a defence and counterclaim. Instead of filing a defence to the counterclaim, the plaintiff filed a summons-in-chambers seeking to strike out the counterclaim under O. 18 r. 19 of the Rules of the High Court 1980 (RHG).

On 31 October 1990, the defendant filed a summons-in-chambers under O. 14 r. 1 and O. 18 r. 19 RHC 1980. However, the Court only proceeded to consider the latter application.

The issue was whether the doctrine of adverse possession was applicable in the Torrens system by virtue of the Sarawak Land Code.

Held:

[1] Under an O. 18 application, there is no constraint as regards to the summons-in-chambers being filed before filing of defence and counterclaim.

[2] Section 131 of the Land Code is based on the notion of indefeasibility of title (see s.132 of the Land Code). Therefore subject to the limitations imposed under s. 132 of the Land Code, an indefeasible title under the Land Code has its full force as a title protected against all other adverse claims.

[3] Section 131 of the Land Code is in the same position as s. 341 of the National Land Code 1965 in that there can be no adverse possession against the registered proprietor of land or any person entitled to a registered interest therein for any period whatsoever. At most it will still be possible to acquire a possessory interest against an unregistered interest. Mere possession of land does not confer a registered title on a squatter but he merely acquires a common law title and the statute of limitation would be applicable in such a situation.

[4] The absence of the statute of limitation in s. 131 of the Land Code makes no difference as to the protection of the indefeasible title of the registered proprietor in the Torrens System. The Torrens statutes do not in any way affect the case of an adverse possessor of unregistered land. However, he must make an application to have the land brought under the provisions of the Torrens system in the same way as any other owner of unregistered land.

[5] An examination of the land legislation of Sarawak would seem to show that there is no provision for an application of a possessory title to have the land brought under the provision of the Torrens statutes. It further confirms that the claim of adverse possession against a registered proprietor and thereby the statute of limitation are not applicable in Sarawak. The statute of limitation is applicable only in respect of the acquisition of possessory title against an unregistered interest.

[6] This is not a matter for the discretion of the Court to exercise its powers. It was not right to call upon the defendant to justify a plea which discloses no cause of action. In the circumstances on this ground alone the plaintiff's action should be struck out.

[7] There does not seem to be evidence shown by the plaintiff in the pleadings that he is either in physical possession of the land or exercising dominion over the property. In the circumstances, the plaintiff has failed to show evidence of adverse possession and O. 18 r. 19 of Rules of the High Court can rightly be invoked.

[8] From the history of the case and the facts disclosed in the statement of claim, the real cause for complaint would appear to be the alleged fraud rather than the adverse possession by a squatter and it was patently clear that the action filed herein on the ground of adverse possession was an abuse of the process of the Court and could be said to be vexatious.

[Plaintiff's action dismissed with costs.]

Cases referred to:

Bank Bumiputra Malaysia Bhd. & Anor. v. Lorrain Esme Osman & Ors. [1987] CLJ (Rep) 472 ***(foll)***

Golden Century Dvpt. Sdn. Bhd. & Anor. v. Ganhoe & Anor. [1982] CLJ (Rep) 106 ***(cons)***

Sparks v. Meers & Ors. [1971] NSWLR ***(cons)***

Willoughby v. Eckstein [1936] 1 All ER 650 ***(cit)***

Shanghai Hall Ltd. v. Town House Hotel Ltd. [1967] 1 MLJ 224 ***(cit)***

Re Vernazza [1959] 2 All ER 202 ***(cons)***

Legislation referred to:

Land Code (Cap 81) (Sarawak), ss. 131, 132, 178

Limitation Ordinance (Cap 49) (Sarawak), s. 26

National Land Code 1965, s. 341

Rules of the High Court 1980, O. 14 r. 1, O. 18 r. 19, O. 32 r. 1, 13(6), O. 92 r. 4

Real Property Act 1900 (NSW)[Aust], s. 45

Other sources referred to:
The Doctrine of Adverse Possession and the Torrens System by Lee Min Sen [1961] MLJ Vol. 27
Tenure and Land Dealings in the Malay States by David S.Y. Wong p. 379
Land Law in Malaysia (Butterworths)

For the Plaintiff - T.O. Thomas; M/s. Thomas & Co.
For the Defendant - Arthur Lee; M/s. Arthur Lee & Co.

JUDGMENT

Haidar Mohd. Noor J:

The plaintiff, filed this action claiming, *inter-alia*:

(1) A declaration that the right and title of Lok Chuan Yew (deceased) to Lots 1456, 1474, 1475, 1476, 1477 and 1478, all of Block 10, Kuching Central Land District, have become extinguished.

(2) A declaration that the plaintiff has become entitled to be registered as the proprietor of the six lots of land known as Lots 1456, 1474, 1475, 1476, 1477 and 1478, all of Block 10, Kuching Central Land District.

Thereafter the plaintiff filed a notice of motion, for an order that the caveat No. L. 4671/1990 registered on 17 April 1990 against all those six parcels of land, namely Lots 1456, 1474, 1475, 1476, 1477 and 1478, all of Block 10, Kuching Central Land District (the said land) shall not be deemed to have lapsed until after the judgment in the action herein, notwithstanding the receipt on 14 June 1990 of a notice under s. 178 of the Land Code (Cap 81) (Land Code) by the plaintiff/caveator from the Registrar, Land and Survey Department, Kuching Division, Kuching. It is supported by the affidavit of the plaintiff. The caveatable interest claimed by the plaintiff is on the ground of adverse possession of the said land. I heard the notice of motion on 5 September 1990 and delivered oral judgment on 8 September 1990 dismissing it with costs. There has been no appeal filed in respect of my judgment on the notice of motion.

By consent, the defendant was allowed extension of time to file the defence. Accordingly the defendant filed the statement of defence and counterclaim on 14 September 1990. Instead of filing the defence to the counterclaim of the defendant, the plaintiff filed a summons in chambers on 15 October 1990 (encl. 28) praying that the counterclaim be struck out with costs on the grounds:

(a) it discloses no reasonable cause of action;

(b) it is frivolous and vexatious;

(c) it is otherwise an abuse of the process of the Court.

In addition thereto, the plaintiff urged the Court to invoke the powers under its inherent jurisdiction, apparently under O. 92 r. 4 of the Rules of the High Court 1980 (RHC). It is supported by the affidavit of the plaintiff.

On 31 October 1990 the defendant filed a summons in chambers under O. 14 r. 1 and O. 18 r. 19 of RHC (encl. 33). It is supported by the affidavit of Kang Min (f), the executrix of the estate of Lok Chuan Yew (deceased).

When both summons in chambers came before me for hearing on 31 January 1991 and after hearing both Counsels, I directed that I would hear the defendant's summons in chambers first. At the hearing of the defendant's summons in chambers, Mr. T.O. Thomas, Counsel

for the plaintiff, raised a preliminary objection. I agree with Mr. T.O. Thomas that the defendant's summons in chambers purportedly under O. 14 r. 1 of RHC, as the heading seems to indicate, is not supported by the grounds put forth therein. In the circumstances Mr. T.O. Thomas submitted that the O. 14 application should not be entertained by me. However, as regards the objection in respect of the O. 18 application, though it is not substantially in Form 62 as required by O. 32 r. 1 of RHC, I am of the view that the defendant did state the grounds as required by O. 18 r. 19(1) of RHC in the application and there is therefore sufficient compliance with the provisions of RHC. In the circumstances while agreeing with the objection raised by Mr. T.O. Thomas in respect of the O. 14 application I would however overrule his preliminary objection in respect of the application of the defendant under O. 18 r. 19(1) of RHC. In the premises I will proceed to consider only the application under O. 18 of RHC.

Before proceeding to consider the merits of the defendant's summons in chambers under O. 18 of RHC it would not be inappropriate perhaps to consider first the issue of delay raised by Mr. T.O. Thomas. It is not disputed that the defendant filed the summons in chambers well after the defence and counterclaim was filed. While it may be true that in an O. 14 application, it must **normally** be filed before the defence is delivered, however, in an O. 18 application it would appear that there is no such constraint. Order 18 r. 19 of RHC specifically provides:

> The Court may **at any stage of the proceedings** order to be struck out or amended any pleading ..." (emphasis added).

The issue of delay in an O. 18 application was considered by Zakaria Yatim J in *Bank Bumiputra Malaysia Berhad & Anor. v. Lorrain Esme Osman & Ors.* [1987] CLJ (Rep) 472 where at p. 475 the learned Judge said:

> The rule does not specify a time limit during which a party may apply to the Court to strike out a pleading. But the application should be made promptly and as a rule before the close of the pleadings. The Court, however, may allow an application to be made even after the pleadings are closed. But such an application must be refused after the action has been set down for trial. See *The Supreme Court Practice*, Vol. 1, p. 304.

I respectfully agree. In the circumstances of the present case the issue of delay raised by Mr. T.O. Thomas is definitely without merits.

As this is an application by the defendant under O. 18 r. 19 of RHC, I need therefore to examine the statement of claim and the affidavits (where applicable) filed therein to see whether it discloses a reasonable cause of action or is scandalous, frivolous or vexatious (not 'rexatious', apparently a typing error!) and/or may prejudice, embarrass or delay the fair trial of the action or is otherwise an abuse of the process of the Court. The notice of intention to use other affidavits by the defendant was issued accordingly in compliance with O. 32 r. 13(6) of RHC.

Essentially, the plaintiff's cause of action is centered on "adverse possession" of the said lands. Therefore the issue of the caveat lodged by the plaintiff, and dealt with by me already, should not be further argued by the Counsels for both parties as it is irrelevant for the purpose of considering the defendant's summons in chambers to strike out the plaintiff's action.

Background Facts

The original title of the said land is Parcel 136, Block 10, Kuching Central Land District containing an area of 1.42 acres. Initially, the plaintiff instituted an Originating Summons no. KG. 94 of 1990 (OS) in his capacity as an administrator of the estate of Najer Hassan bin

Paylollahan @ Natir Khan bin Foijoleh @ Najer Hassan bin Paylollahan, (deceased) (Natir Khan) against the Registrar of Land & Survey Department, Kuching Division, Kuching and Kang Min (f), (the executrix of the estate of Loke Chuan Yew, deceased) as 1st and 2nd defendants respectively, seeking:

(a) the caveat No. L. 3033/73 registered on 30 May 1973 against the said land shall not be deemed to have lapsed by virtue of the provisions of s. 178 of the Land Code or otherwise;

(b) the rights and titles to the said land have been extinguished by adverse possession on the part of the plaintiff within the provision of s. 26 of the Limitation Ordinance (Cap 49);

(c) the plaintiff is entitled to be registered as the proprietor of the said land.

The circumstances that led to the filing of the caveat No. L. 3033/73 by Natir Khan and the OS by the plaintiff would appear to be more on the basis of the allegation that Lok Chuan Yew (deceased) (LCY) became the registered proprietor of the said land in 1968 by fraud rather than adverse possession. The facts in the OS would seem to show that Natir Khan entered into a sale agreement on 23 January 1968 (see Exh. 'D' in the OS) with LCY in respect of the said land for a consideration of RM38,500 of which RM30,000 was acknowledged by LCY as a debt to Natir Khan. A memorandum of transfer of the said land was duly executed before an advocate, purportedly transferring the said land to LCY and was duly registered in LCY's name. However, Natir Khan continued to be in possession of the said land and on his refusal to give up possession LCY commenced action in the District Court at Kuching vide civil case No. C/CIV/17/73 against Natir Khan in January 1973 claiming, *inter alia*, vacant possession of the said land. Natir Khan in his amended defence in civil case No. C/CIV/17/73 alleged fraud and set out the particulars of fraud under para. 1 thereof and further claims *inter alia*, for a declaration that he is entitled to the said land which forms part of land described in the agreement of sale and memorandum of transfer dated 23 January 1968 in respect of Parcel 136 executed by themselves, rescission of the said agreement and memorandum of transfer and an order directing the Registrar, Land Registry, Kuching to rectify the register under Part VII of the Land Code to substitute Natir Khan as the registered proprietor of the said land. Subsequently civil case No. C/CIV/17/73 was discontinued with the consent of Counsel for Natir Khan without prejudice to LCY commencing further proceedings in the High Court (see Exh. 'E' to OS). Though the reason for the discontinuance was not disclosed apparently it would seem clear to me that by the prayers in the counterclaim of Natir Khan, the counterclaim is beyond the jurisdiction of the District Court. As far as I know there has been no action filed in the High Court so far by LCY or his executrix or administrator as intimated by Exh. 'E'. Be that as it may, the plaintiff in his capacity as administrator of the estate of Natir Khan in instituting the OS claimed the caveat No. L. 3033/73 as an asset of the estate (see Exh. 'A' to the OS). I dismissed the plaintiff's summons in chambers for an order that caveat No. L. 3033/73 shall not be deemed to have lapsed by virtue of s. 178 of the Land Code until after the disposal of the OS and in fact I questioned whether a caveat can be considered as an asset of the estate. The plaintiff, with the consent of the Counsel for the 2nd defendant, withdrew the OS and it was accordingly struck out with costs by me.

Subsequently the plaintiff filed a caveat No. L. 4671 on 16 April 1990 in respect of the said land claiming adverse possession of upwards of 17 years against the interests of the registered proprietor (LCY) apparently on the ground that the right of the registered proprietor has been extinguished by virtue of s. 26 of the Limitation Ordinance (Cap. 49) read with item

112 of the schedule to the said Ordinance. On 26 June 1990 the plaintiff filed the present suit in his personal capacity seeking the declarations set out by me earlier. At the same time he filed by way of notice of motion seeking for an order that caveat No. L. 4671/90 shall not be deemed to have lapsed under s. 178 of the Land Code until after the judgment in this suit. This was as a result of the notice issued by the Registrar after an application by the defendant as executrix of the estate of Lok Chuan Yew for transmission in respect of the said land. As indicated earlier on, I dismissed the plaintiff's notice of motion and there has been no appeal against my said order. So much for the background facts.

The issue for me to consider now is whether the defendant can succeed under O. 18 r. 19 of RHC for the plaintiff's writ of summons and statement of claim filed therein to be struck out.

In considering the defendant's application the Court will have to examine and consider whether the claim of the plaintiff is obviously unsustainable. Wan Sulaiman (FJ) in *Golden Century Development Sdn. Bhd. & Anor. v. Ganhoe & Anor.* [1982] CLJ (Rep) 106 at p. 109, said :

> We think it will suffice for us to refer to the well known authority *A.G. of Duchy of Lancaster v. L. & N.W. Railway Co.* [1892] 2 Ch. 274 in which it was held that the summary procedure under the English rule which is identical to ours, can only be adopted when it can be clearly seen that a claim or answer is on the face of it "obviously unsustainable".

Though it would appear that the main complaint is fraud, the plaintiff proceeded on adverse possession as a cause of action. It is then pertinent for me to consider whether the doctrine of adverse possession is applicable in the Torrens system by virtue of the Land Code. The doctrine of adverse possession relates to the mode of acquisition of title to land after the statutory period of limitation has elapsed.

Section 131 of the Land Code is the relevant provision on this aspect and it reads :

> No title or right to land included in the register shall be acquired by possession or user **adversely** to or in derogation of the title of the registered proprietor holding directly from the Government. (emphasis added)

In my view, such a provision is based on the notion of indefeasibility of title (see s. 132 of the Land Code). Therefore subject to the limitations imposed under s. 132 of the Land Code, an indefeasible title under the Land Code has its full force as a title protected against all other **adverse claims**.

Mr. Arthur Lee, Counsel for the defendant, in submitting that the doctrine of adverse possession is not applicable here relied on the case of *Sparks v. Meers & Ors.* [1971] NSWLR where the Supreme Court of New South Wales held that it was not possible for the plaintiff to claim adverse possession against the registered proprietor of land when considering s. 45 of the Real Property Act 1900 of New South Wales which reads:

> No title to land adverse to or in derogation of the title of the registered proprietor shall be acquired by any length of possession by virtue of any statute of limitations relating to real estate, nor shall the title of any such registered proprietor be extinguished by the operation of such statute.

Mr. Arthur Lee contended that s. 45 of the Real Property Act 1900 of New South Wales is similar to our s. 131 of the Land Code. That may be so except that the statute of limitation is not mentioned therein in our Land Code s. 131. Under the corresponding provision in the National Land Code 1965 (applicable to Peninsular Malaysia only) that is, s. 341 the statute of limitation is mentioned therein.

Mr. Thomas, Counsel for the plaintiff, submitted that the plaintiff is relying on the statute of limitation to back his claim of adverse possession. In that event, what then is the effect of the absence of the statute of limitation in s. 131 of the Land Code?

The exclusion of the application of the doctrine of adverse possession in the Torrens system is based on the notion that such doctrine would conflict with the fundamental principle of the Torrens system - the indefeasible register. The basic object of the Torrens system, it would appear, being to facilitate proof of ownership by certifying title in a written instrument and therefore this principle of allowing ownership to be proved by evidence of physical occupation should be rejected (see the article on "*The Doctrine of Adverse Possession and the Torrens system*" by Lee Min Sen in [1961] MLJ Vol. 27 at XXVi). Adverse possession was once another express exception to indefeasibility of title under the early Registration of Titles legislation in the Federated Malay States prior to the former Land Code (Cap 138). The former Land Code (Cap 138) however, altered the law with the introduction of s. 43. The corresponding provision in the National Land Code 1965 is s. 341. According to David S.Y. Wong in "*Tenure and Land Dealings in the Malay States*" at p. 379

> It may be observed that the reason for making adverse possession an exception to the indefeasibility of title in the early legislation was presumably related to the state of land administration at that period when a system of registration of land holdings was being gradually established and the policy was to favour the recognition of claims by persons who had long been in actual possession of the land

In Sarawak the previous Land Code (Cap 27) in giving effect to the indefeasible title did not recognise the squatters' right to acquire a title to land by physical possession. This is provided under s. 30(1) of the Land Code (Cap 27) which reads -

> No one whether a native or otherwise may, without documentary title, acquire a title to land by squatting on it or on any part thereof or exercising acts of ownership over it, and anyone so doing may be required to vacate the land without payment of any compensation, even though he may have squatted on the land or exercised acts of ownership over it for twelve years and upwards.

Thus the Sarawak land legislation, it would seem did not clearly provide adverse possession as an exception to indefeasibility of title. I agree with the view expressed by the learned authors in *"Land Law in Malaysia" (Butterworths)* at p. 7 that s. 131 of the Land Code is in the same position as s. 341 of the National Land Code 1965 in that there can be no adverse possession against the registered proprietor of land or any person entitled to a registered interest therein for any period whatsoever.

It would appear at most that it will still be possible to acquire **a possessory title against an unregistered interest**. Therefore mere possession of the land does not in my view, confer a registered title on the squatter but he merely acquires a common law title and the statute of limitation would be applicable in such a situation. In *Sparks v. Meers (supra)* the Supreme Court at p. 13 said:

> Moreover, s. 45 does not simply provide that the Real Property Limitation Act shall not apply to any land, or to any estate, the title to which is under the provisions of the Real Property Act; it simply purports to protect the title of the registered proprietor and does not appear to be directed to the rights of persons who are not concerned with the title of the registered proprietor.

Further on, the Supreme Court of New South Wales said:

> However what s. 45 does do is to prevent the extinction of the title of the registered proprietor by any adverse possession.

The Supreme Court of New South Wales further on the same page said:

> In a Queensland decision, *Miscamble v. Phillips* [1936] QSR 136, the Full Court of the Queensland Supreme Court held that a title could not be obtained to Torrens land in Queensland by virtue of any adverse possession, **despite the absence of any equivalent in the Real Property Act of 1861 (Q) of the New South Wales s. 45**. This view was arrived at on the ground that the Queensland equivalent of s. 40 provided that the certificate of title should be conclusive evidence that the person named therein is seised or possessed of the land for the estate or interest therein specified. (Emphasis added)

Our s. 131 protects the "title" or `the right' of the registered proprietor; it prevents both the acquisition of a title by adverse possession or user to or in derogation of the title of the registered proprietor holding directly from the Government. The situation here appears to be stronger as compared to Queensland where there is no equivalent provision of s. 45 of the New South Wales Real Property Act (similar to our s. 131 of the Land Code). Mr. T.O. Thomas further argued that the title in the said land is not held directly from the Government. I think, such an argument is a fallacy as title of land is, in my view, held directly from the Government as is evidenced from the definition of "document of title" in s. 2 of the Land Code which reads:

> ...document of title" means a grant, lease of State land, occupation ticket or other document evidencing title to land whenever issued, but does not include a licence, permit or caveat.

Therefore one does not hold a title of land from any other person other than the Government and to construe otherwise would lead to absurdity as alienation of land is by the Government.

Therefore, in my view, the absence of the statute of limitation in s. 131 of the Land Code makes no difference as to the protection of the indefeasible title of the registered proprietor in the Torrens system. It would appear that the Torrens statutes do not in any way affect the case of an adverse possessor of unregistered land. However, he must make an application to have the land brought under the provisions of the Torrens system in the same way as any other owner of unregistered land.

Even assuming that the statute of limitation is applicable here as contended by Mr. T.O. Thomas, the plaintiff must register his interest once the statutory period has elapsed or he is liable to be ousted. This is in conformity with the Torrens system and the indefeasible title notion. There is no evidence of the registration of his interest in this case. In any event, an examination of the land legislation of Sarawak would seem to show that there is no provision for an application of a possessory title to have the land brought under the provision of the Torrens statutes. It further confirms my view that the claim of adverse possession against a registered proprietor and thereby the statute of limitation are not applicable in Sarawak. It would appear therefore that the statute of limitation is applicable only in respect of the acquisition of possessory title against an unregistered interest.

If the construction of the law is clear, as is my view in this case, it is not a matter of discretion for the Court to exercise its powers. It is not right to call upon the defendant to justify a plea which discloses no cause of action. In the circumstances on this ground alone this action should be struck out as disclosing no cause of action and is prejudicial and embarrassing (see *Willoughby v. Eckstein* [1936] 1 All ER 650).

If I am wrong in my construction of the law I then need to examine the pleadings and the affidavit evidence to see whether there is a cause of action disclosed on adverse possession. It is agreed that it is not necessary for the plaintiff to prove affirmatively physical possession

of every bit of land. It is enough if the acts of possession show that the plaintiff had enjoyed such dominion over the property in the manner in which such dominion is normally exercised, so as to acquire title (see p. 331 of *B.B. Mitra's on Limitation Act, 17th Edn.*). From the affidavit in opposition of Lok Haw Joo (Encl. 9) filed on behalf of the defendant, it would seem to show that the plaintiff was not staying on the land and did not enjoy such dominion over the land in question. There has been no affidavit filed by the plaintiff denying such facts. It is true that the plaintiff is not bound to file any affidavit in reply (see *Shanghai Hall Ltd. v. Town House Hotel Ltd.* [1967] 1 MLJ 224) but in the absence of a denial or explanation of such material facts, in my view, such facts are deemed to be admitted as correct. There does not seem to be evidence shown by the plaintiff in the pleadings that he is either in physical possession of the land or exercising dominion over the property. In the circumstances he failed to show evidence of adverse possession and O. 18 r. 19 of RHC can rightly be invoked.

Further, the Court is entitled to look at the history of this case to determine whether the pleadings disclose a form of action. This is what Lord Parker CJ said in *Re Vernazza* [1959] 2 All ER at p. 202:

> In considering whether any proceedings are vexatious one is entitled to and must look at the whole history of the matter and it is not determined by whether the pleading discloses a form of action. Indeed that is the principle applied under the rules of Court when application is made to strike out a pleading. Though the pleading may be in order, the Court in its inherent jurisdiction is entitled to look at affidavits as to the history of the matter, and if in the light of the history the action is vexatious, the matter can be struck out and the action dismissed.

In the OS the plaintiff, in his capacity as administrator, relied on similar grounds as the present case but for reasons best known to himself decided to withdraw the OS. From the history of the case as set out earlier by me and the facts as disclosed in the lengthy statement of claim the real cause for complaint would appear to be the alleged fraud rather than adverse possession by a squatter and it is patently clear to my mind that the action filed herein on the ground of adverse possession is an abuse of the process of the Court and can be said to be vexatious.

In the circumstances I would allow the application of the defendant and accordingly I dismiss the action with costs.

Also found at [1991] 3 CLJ 2490